IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

WRIT PETITION NO. 4771 OF 1997

1. SMT. LILABAI DATTATRAY NIKUMBH)
R/o H.No. 2173, Pinzar Lane, Yeola)
Tal. Yeola, Dist. Nashik)
2. SHANKAR BABURAO NIKUMBH, SONAR)
R/o. H.No. 2173, Pinzar Lane,)
Yeola, Tal. Yeola, Dist. Nashik)
3. YUVRAJ SHANKAR NIKUMBH, SONAR)
Rachana Vidyalaya, Sharanpur Road,)
Nashik.) PETITIONERS

Versus

1. BABURAO SHANKAR KANADE (Deceased))
through his Legal Heirs & Represen-)
tatives.)
1A. INDIRABAI BABURAO KANADE)

All R/o R.No. 29, Gandhi Bhuvan,)
Punam Lane, Lamington Road, Bombay)
2. RAMLING SHANKAR KANADE)
R/o Bombay Gas Lane, Saraswati Bldg.)
Sane Guruji Road, Lalbag, Bombay-12) RESPONDENTS

Mr. P.N. Joshi for petitioners
Mr. M. M. Sathaye for respondents 1A & 2

CORAM:-SMT. RANJANA DESAI,J.

DATED:-5/9/2005.

ORAL JUDGMENT:

. The petitioners are original defendants-tenants. Respondent 1A to 1C are heirs of one Baburao Shankar Kanade, deceased-plaintiff 1-landlord. Respondent 2 is original plaintiff 2. For the sake of convenience the parties will be referred to in this judgment as per their status in the suit.

2. Admittedly the plaintiffs are owners of suit house bearing survey No. 2173 consisting of two floors situate in Pinzar Galli, Yeola. There are three rooms on each floor. The plaintiffs rented the suit house to the husband of defendant 1 Dattatray on monthly rent of Rs.12/-per month. After the death of Dattatraya Nikumbh, defendants 1 to 3 being his heirs have stepped in his shoes. The plaintiffs filed R.C.S. No. 213 of 1988 against the defendants for recovery of suit house inter alia under Section 12 and 13 (1) (g) of The Bombay Rents, Hotel and Lodging House Rates (Control) Act, 1947, ("the Rent Act" for short).

3. As on the date of filing of the suit, shortly stated the plaintiffs' case as averred in the plaint was as follows:

. Plaintiff 1 is an advocate. He is residing at Lamington Road, Bombay in rented premises. There are six members in his family. He has now retired. Two rooms which are in his possession are not sufficient for his family and, therefore, he wants to go to Yeola and reside their. Plaintiff 2 is a freedom fighter. He was working in Famous Cine Laboratory and Studio Ltd. at Mahalaxmi, Mumbai. He has now retired. He is staying in premises owned by someone as a licensee. The said premises admeasures 8' x 8'. His son is staying with him. The premises in his occupation are not sufficient for them and, therefore, the suit house is bonafide and reasonably required by him. According to the plaintiffs the defendants own two houses at Yeola and hence they would not be inconvenienced, if the decree of eviction is passed.

4. The defendants refuted the plaintiffs' case. According to the defendants plaintiff 1 is a well-known lawyer who is earning substantial money

in Bombay. He is a rich person having an independent office in Bombay. Plaintiff 2 has a big business in Bombay and he also gets pension. All members of his family are earning. The plaintiffs have settled in Bombay and hence they do not require the suit house. The defendants further contended that apart from the suit house they are not in possession of any other premises. Other premises owned by them are occupied by tenants and litigation is pending in respect of the said premises in courts. The defendants have not been able to get back possession of the said premises. According to the defendants there are 8 to 10 members in their family and it is not possible for them to get any alternative premises in Yeola and if they are asked to vacate the suit premises greater hardship would be caused to them.

5. In support of their case, the plaintiffs and the defendants led their evidences. The parties relied on certain documentary evidence also.

6. The trial court partly decreed the suit. The trial court held that the plaintiffs have proved that the defendants are in arrears of rent. It further held that the plaintiffs had proved their

reasonable and bonafide requirement and the defendants have failed to prove that greater hardship would be caused to them if the decree of eviction is passed. The trial court observed that there are only 5 members in the defendants' family. Except the suit house the plaintiffs do not have any other house in Yeola. There is no documentary evidence to show that the plaintiffs have other houses in Bombay. The trial court further observed that the defendants have not been able to secure possession of the premises owned by them and, therefore, taking into consideration all these aspects and the aspect of hardship it is just and proper that the defendants should be asked to hand over possession of three rooms situated on the first floor to the plaintiffs. Thus the defendants were allowed to retain three rooms on the ground floor with them and they were directed to hand over possession of the first floor to the plaintiffs.

7. Being aggrieved by the said partial decree to the extent to which it directed the defendants to retain three rooms on the ground floor with them, the plaintiffs preferred Civil Appeal No. 302/94 in the court of III Addl. District Judge, Nashik. The learned counsel for the plaintiffs did not

press the ground of default in payment of rent. The lower appellate court held that the plaintiffs had proved that they bonafide and reasonably require the suit house for their use and occupation and that greater hardship would be caused to them if the decree of eviction is not passed. The lower appellate court directed the defendants to hand over possession of the suit house to the plaintiffs. Being aggrieved by the said judgment and order, the defendants have preferred this petition.

8. It must be noted that the defendants did not challenge the partial decree under which they were directed to hand over three rooms situate on the first floor of the suit house to the plaintiffs. Therefore, that part of the trial court’s decree is confirmed. The defendants are now challenging the judgment and decree passed by the lower appellate court which holds that the plaintiffs’ reasonably and bonafide require the remaining three rooms situated on the ground floor also. In short the defendants now want to retain possession of the three rooms. They want this court to restore the trial court’s decree. Since this court is now concerned only with reasonable and bonafide

requirement of the landlord, it is necessary to concentrate only on facts which are relevant to that aspect of the matter.

9. I have heard at considerable length Mr. Joshi, the learned counsel appearing for the petitioners. He strenuously contended that the plaintiffs' suit must fail because there are no proper pleadings about the reasonable and bonafide requirement of the plaintiffs. Mr. Joshi pointed out that the plaintiffs have pleaded that they require the suit house for themselves. However, there are no averments making it explicitly clear that they require the suit house for the family. Mr. Joshi contended that Section 13(1)(g) of the Rent Act permits the landlord to pray for a decree of eviction if the premises are reasonably and bonafide required by him for occupation by himself or by any person for whose benefit the premises are held. Mr. Joshi contended that to get a decree of eviction under Section 13(1)(g) of the Rent Act, the plaintiffs ought to have properly pleaded their case. Considering the advanced age of the plaintiffs, their case that they desire to stay in the suit house at Yeola does not appear to be genuine. It was necessary for the plaintiffs to

plead the requirement of their family which they have not done.

10. In this connection, the learned counsel relied on **Koyilerian Janaki & Ors. v. Rent Controller (Munsiff) Cannanore & Ors., (2000) 9 SCC 406.** In that case the Supreme Court was dealing with Section 11(3) of the Kerala Buildings (Lease and Rent Control) Act, 1965 (for short, "the Kerala Rent Act"). Under that section, a landlord may apply to the Rent Control Court for an order directing the tenant to put the landlord in possession of the building if he bonafide needs the building for his own occupation or for the occupation by any member of his family dependent on him. In that case, the landlady had pleaded that the building was needed for her married daughter. However, there was no pleading that the married daughter and son-in-law are dependent on the landlady. The Supreme Court observed that unless it is pleaded that the married daughter and son-in-law are dependent on the landlady, the petition under Section 11(3) of the Kerala Rent Act cannot succeed on the mere allegation that the building is needed for the occupation of the married daughter and the son-in-law and, therefore,

the appellate court was not justified in allowing the petition of the landlady on the ground that the landlady bonafide requires the building for occupation of her married daughter and son-in-law. Mr. Joshi contended that the ratio of this judgment is squarely attracted to the facts of the present case and inasmuch as in this case also there are no pleadings as regards requirement of the plaintiff's family no decree of eviction can be passed against the defendants.

11. Mr. Joshi then referred to the judgment of the Supreme Court in **Raj Gopal (Dead) By LRs. v. Kishan Gopal & Anr., (2003) 10 S C C 653** where the Supreme Court has reiterated the principles laid down by it in its earlier judgments that in absence of the specific pleadings no lis exists between the parties and the courts are precluded from taking cognizance of pleas on mere evidence. Mr. Joshi contended that if the plaintiffs had taken up a definite stand that the premises are needed for the family, the defendants would have met that contention and pleaded that the need of the family was not bonafide. He submitted that faulty pleadings have deprived the defendants of an opportunity to take appropriate defence. The

defendants are prejudiced by the plaintiffs' faulty pleadings.

12. The learned counsel then urged that the fact that defendant 1's son has acquired premises which are very near the suit house, is not relevant. In this connection, he relied on **Anandi D. Jadhav (dead) by LRs. v. Nirmala Ramchandra Kore & Ors.,** (2000) 3 SCC 703, where the Supreme Court has held that the moral duty of sons towards their parents cannot be enlarged to a right to provide them residence as would affect their right as tenants in their pre-existing tenanted premises. Mr. Joshi then drew my attention to the affidavit filed by defendant 1 in this writ petition. It is stated in the affidavit that at the admission stage of this petition, the defendants had handed over vacant and peaceful possession of the three rooms on the ground floor of the suit house to the plaintiffs. However, in spite of having obtained possession, none of the respondents-plaintiffs have been residing in the said premises and the said premises are always kept locked. Reliance is placed on certain photographs. It is further stated that in the voter's list the plaintiff's name is not found. Mr. Joshi further pointed out that during the

pendency of the suit plaintiff 1 has expired and all these events must be taken into consideration while dealing with the requirement of the plaintiffs.

13. Mr. Joshi then drew my attention to the judgment of the Supreme Court in **Badrinarayan Chunilal Bhutada v. Govindram Ramgopal Mundada (2003)2 S C C 320** where while dealing with the aspect of partial eviction, the Supreme Court observed as follows:

> "The provisions of the Rent Act do not bar a partial eviction being ordered rather contemplate a partial eviction specifically which would of course depend on the answer to the question whether it would be enough to dislodge the tenant from only a part of the premises in his possession, and to what extent, to satisfy the proved requirement of the landlord associated with consideration of comparative hardship. If the court is satisfied that the ends of justice would be met if the tenant is not called upon to vacate the entire tenancy premises but only a part of it, then the

court may order partial eviction so that the requirement of the landlord is satisfied and the tenant is also not deprived of his running business activity. In as much as Section 13(2) entails the consequence of the landlord being denied decree of of eviction, wholly or partly, in spite of his having proved reasonable and bona fide requirement within the meaning of Section 13(1)(g), the burden of proving availability of grounds under Section 13(2) of the Act is on the tenant. It is expected of the parties to raise necessary pleadings and the Court to frame an issue based on the pleadings so as to enable parties to adduce evidence and bring on record such relevant material as would enable the court forming an opinion on the issue as to comparative hardship and consistently with such finding whether a partial eviction would meet the ends of justice. Even if no issue has been framed, the court may discharge its duty by taking into consideration such material as may be available on record."

14. Mr. Joshi contended that in the present case the trial court has, after marshalling the evidence and considering the question of comparative hardship, passed a decree of partial eviction and held that it would meet the ends of justice. He submitted that from the pleadings as well as from the evidence it is very clear that the plaintiffs have led stress only on their own requirement. One of the plaintiffs is dead. The members of the plaintiffs family have settled in Bombay and, therefore, it can, by no stretch of imagination, be said that the entire suit house is needed by the plaintiffs. The defendants have yet not got possession of the premises owned by them. The defendants cannot be forced to reside in the premises which are in the name of the son of defendant 1. In such circumstances, the trial court has rightly passed a partial decree of eviction. It is covered by the Supreme Court judgment in **Badrinarayan Chunilal Bhutada's case (supra)** and, therefore, the lower appellate court was wrong in setting it aside.

15. Mr. Sathe, the learned counsel appearing for the respondents-plaintiffs, on the other hand, submitted that no interference is necessary with

the impugned judgment. He submitted that it is well settled that the landlord is the best judge of his requirement and reasonable and bonafide requirement means something more than desire but not dire necessity. In this connection Mr. Sathe relied on the judgment of this court in **Meenal Eknath Kshirsagar v. Traders & Agencies & Anr., 1997 (1) M.L.J. 121** and the judgment of the Supreme Court in **Raghunath G. Panhale (decd.) by LRs. v. M/s. Chaganlal Sunderji & Co., AIR 1999 SC 3864**. Mr. Sathe then contended that what is pleaded in the plaint is not merely the requirement of the plaintiffs but also requirement of the plaintiffs' family. In any case, he submitted that the word "himself" occurring in clause (g) of section 13(1) has to be read to mean the landlord and the members of his family, who are dependent on him. In this connection, he relied on the judgment of the Supreme Court in **Dwarkaprasad v. Niranjan and Anr., AIR 2003 SC 2024**. The learned c**ounsel** further contended that it is true that plaintiff 1 has expired but when a suit is filed by the landlord on the ground of his personal need on the death of the landlord, his bonafide requirement does not come to an end. The legal representatives or the sons of the landlord, who attain majority

during the pendency of the suit are entitled to defend the estate. Bonafide need of the landlord is to be examined on the date of commencement of the proceedings. Subsequent events, such as, death of the landlord are not relevant. For this proposition, he relied on the judgment of the Supreme Court in **Shakuntala Bai and Ors. v. Narayan Das & Ors. AIR 2004 SC 3484**. The learned counsel then referred to the judgment of the Supreme Court in **Gaya Prasad v. Pradeep Shrivastava, 2001 SC 803** and contended that the crucial date for deciding bonafides of the need is date of application. Subsequent developments occurred pendente lite can be taken into account only when need of the landlord is completely eclipsed by such subsequent events. He submitted that such is not the case here and, therefore, the decree of eviction has rightly been passed.

16. While dealing with the submission of the learned counsel for the petitioners that the plaintiffs are residing in Bombay and, therefore, their desire is to settle in their house at Yeola cannot be called bonafide or reasonable Mr. Sathe relied on judgment of the Supreme Court in **Atma S. Berar v. Mukhtiar Singh, AIR 2003 SC 624**. where

the Supreme Court has held that the landlord's desire to settle in suit house cannot be described as whimsical because during the pendency of the suit he had lived abroad.

17. The learned counsel then referred to the judgment of this court in **Anandrao Ganpatrao Sable v. Madhavrao Ramrao Kanase & Anr., 1989 (1) B.C.R. 256**, where while considering the aspect of partial decree this court has held that partial decree should not be passed when partition is not feasible and it materially affects enjoyment of the property by both the parties. He submitted that in the facts of this case also partition is not feasible and if the plaintiff's requirement is considered a partial decree would materially affect the enjoyment of the property by the plaintiffs. The portion of the property retained by the defendants would also not fully serve their purpose. In such a situation partial decree could not have been passed.

18. The learned counsel also referred to the judgment of this court in **Tukaram Khushaba Chorge since deceased by his LRS. v. Malam Janardhan Jagtap & Anr., 2000 Vol. 102(2) Bom. L.R. 461**,

where this court has held that it is for the tenant to plead that a part of the premises shall meet the landlord's need. He submitted that inasmuch as there is complete absence of such pleadings a partial decree could not have been passed in this case.

19. Lastly the learned counsel relied on **Gajanan Krishnaji Wakankar v. Madhukar Rajaram Padhye, 1990 B.C.R. 116**, where this court has held that when hardship is equal to the landlord and the tenant decree of eviction is the right course. He, therefore, urged that even if this court comes to a conclusion that equal hardship is caused to the plaintiff and the defendant, the right course would be to pass a decree of eviction.

20. In **Raghunath Panhale's case & Meenal's case (supra)**, the Supreme Court has crystalised the principles which the court should keep before it while dealing with the case of bonafide and reasonable requirement of the landlord. In Panhale's case the Supreme Court has observed as follows:-

"The word 'reasonable' connotes that the

> requirement or need is not fanciful or unreasonable. It cannot be a mere desire. The word 'requirement' coupled with the word reasonable means that it must be something more than a mere desire but need not certainly be a compelling or absolute or dire necessity. A reasonable and bona fide requirement is something in between a mere desire or wish on one hand and a compelling or dire or absolute necessity at the other end. It may be a need in present or within reasonable proximity in the future. The use of the word 'bonafide' is an additional requirement under S. 13(1)(g) and it means that the requirement must also be honest and not be tainted with any oblique motive."

21. In **Meenal's case (supra)** the Supreme Court **further** clarified this aspect as under:-

> "It is for the landlord to decide how and in what manner he should live and he is the best judge of his residential requirement. If the landlord desires to beneficially enjoy his own property when the other

> property occupied by him as a tenant or on any other basis is either insecure or inconvenient it is not for the Courts to dictate to him to continue to occupy such premises. The fact that the plaintiff was the owner of the suit premises and that she did not own any other premises in the city of Bombay was not in dispute. Though she would have been entitled to stay in the premises in which her husband was a tenant, if for any reason her husband had parted with possession of such premises and the same were occupied by her husband's brother, it could not be said that the said premises were available to her and by not referring to those facts she had come to the Court with unclean hands and that by itself was sufficient to disentitle her from getting a decree of eviction".

22. It is clear, therefore, that the landlord is the best judge of his requirement and that his requirement has to be more than desire but not dire necessity. Keeping these principles in mind I will approach this case.

23. I have carefully perused the plaint. It is true that it is stated in the plaint at some places that the plaintiffs have desire to go and stay in their house at Yeola but if the pleadings are read in proper perspective one finds that it is not merely the requirement of plaintiffs which is pleaded. While referring to the requirement of plaintiff 1 it is stated that there are six persons in his family and the two rooms in their occupation are small and therefore, they are inconvenienced. While dealing with the requirement of plaintiff 2 it is stated that he is staying as a gratutious licensee in someone else's house. The said place admeasures 8' x 8'. He has a son who stays with him and the said place is not adequate for their residential requirement. Therefore, in my opinion, it cannot be said that the requirement pleaded is only that of the plaintiffs. The judgment of the Supreme Court in **Koyilerian's case (supra)** is not applicable to this case.

24. In this connection the reliance placed by Mr. Sathe on the judgment of the Supreme Court in **Dwarkaprasad's case (supra)** is apt. The Supreme Court was dealing with a suit filed by the landlord for eviction of the tenant under Section 13 (1)(g)

of the Rent Act. The Supreme Court referred to Section 13(1)(g) and observed that the key words which are required to be interpreted are: "For occupation by himself" occurring in Section 13(1)(g) of Rent Act. The Supreme Court further observed that such a provision cannot be construed strictly so as to confine it to the requirement of the landlord alone and it can be extended to include the requirement of members of landlord's family. In the facts of that case the plaintiff had pleaded that he constituted a joint family with his mother, brothers and sisters. The Supreme Court held that it was obligation of the landlord to settle his brothers in business. Therefore, he can legitimately seek eviction of a tenant by pleading that he needs demised premises to settle his son and his younger brothers in business.

25. In the instant case though in the plaint there is reference to the personal requirement of the plaintiffs as already noted by me there is also reference to the number of members of the plaintiffs' family, nature of the accommodation available to them and the inconvenience caused to them. Therefore, the requirement of the plaintiffs would include requirement of members of their

families.

26. It was argued that since plaintiff 1 has died the circumstances have changed and it can no longer be said that the entire premises are required by the plaintiffs. In **Shakuntalabai's case (supra)**, the Supreme Court was dealing with somewhat similar fact situation. The question which the Supreme Court was considering was whether on account of death of a landlord during the pendency of the appeal a suit validly instituted by him for eviction of a tenant on the ground of his personal requirement is liable to be dismissed. After referring to the relevant cases on the point the Supreme Court held that if the subsequent events like death of the landlord is to be taken note of at every stage till the decree attains finality, there will be no end to litigation. By the time a second appeal gets decided by the High Court, generally a long period elapses and on such a principle if during this period the landlord who instituted the proceedings dies, the suit will have to be dismissed without going into merits. The same thing may happen in a fresh suit filed by the heirs and it may become an unending process. Taking into consideration the subsequent events

may, at times, lead to rendering the whole proceedings taken infructuous and colossal waste of public time. The Supreme Court further observed that there is no warrant for interpreting a Rent Control legislation in such a manner the basic object of which is to save harassment of tenants from unscrupulous landlords. The object is not to deprive the owners of their properties for all times to come. These observations in my opinion are squarely applicable to the facts of the case.

27. The suit is of the year 1988 and we are in 2005. In the nature of things during the interregnum there are bound to be some changes. In the facts of this case, if death of plaintiff 1 is taken against the plaintiffs that would cause grave injustice to them because the deceased plaintiff and his brother have also pleaded the requirement of members of their respective families. In this case subsequent event like death of plaintiff 1 should not deter the court from passing a decree in favour of the plaintiffs.

28. It was argued that the plaintiff’s desire to stay in Yeola is not genuine because the plaintiffs have settled in Bombay. Plaintiff 2 is old and it

is impossible that he would go and stay in Yeola alone.

29. I find no force in this submission. The plaintiffs have proved the reasonable and bonafide requirement of their families to stay in Yeola. And in any case desire of plaintiff 2 to settle in his village cannot be called a mere whim. In this connection I may usefully refer to the judgment of the Supreme Court in **Atma S. Berar's case (supra)**. In that case the landlord was an old retired person who had, during the pendency of the suit filed by him for eviction of the tenant lived abroad. The Supreme Court observed that it is very natural for an aging Indian to witness his sentiments for the motherland and the birth place gaining more strength and bondage becoming thicker with the advancement of age. His desire to spend the evening of his life peacefully in his own house cannot be called unnatural and wishful. Similarly in the instant case the desire of plaintiff 2 to spend the evening of his life in his village in Yeola cannot be called unnatural.

30. Morever in the facts of this case it cannot be said that on account of plaintiff 1's death or any

other subsequent development the requirement of the plaintiffs has come to an end. In **Gayaprasad's case (supra)** where the Supreme Court was considering the same question the Supreme Court observed that the crucial date for deciding as to the bonafides of the requirement of the landlord is the date of his application for eviction. It was further observed that the subsequent events to overshadow the genuineness of the need must be of such nature and of such a dimension that the need propounded by the landlord should have been completely eclipsed by such subsequent events. The Supreme Court referred to its earlier judgment in **Hasmat Rai v. Raghunath Prasad (1981) 3 S C C 103** where it has emphasised that the subsequent events should have 'wholly satisfied' the requirement of the party who petitioned for eviction on the ground of personal requirement. In the facts of this case it cannot be said that because of death of plaintiff 1 or any other subsequent developments the requirement of the plaintiffs is completely eclipsed. It is pertinent to note that the allegations made by defendant 1 in the affidavit filed in this court have been denied by the plaintiffs in their affidavit-in-reply. I find no force in those allegations.

31. In my opinion, the trial court was wrong in passing a partial decree. There are three rooms on each floor. The trial court has not given any reason as to how three rooms on the first floor would be sufficient to accommodate two families of the plaintiffs. It is true that in **Badrinarayan Chunilal Bhutada's case (supra)**, the Supreme Court has observed that even if no issue as regards partial decree is framed, the court may discharge its duty by taking into consideration such material as may be available on record. However, the Supreme Court has also observed that the burden of proving the availability of ground under section 13(2) of the Rent Act is on the tenant. In this case, neither there are any pleadings nor any evidence led by the tenant which would establish that the three rooms on the first floor would be sufficient for the plaintiffs. There was no material available on record for the trial court to come to the conclusion that partial decree would balance the requirement of both sides. I may also refer to **Tukaram Khushaba Chorge's case (supra)**, where this court was dealing with a landlady's suit filed under section 13(1)(g) of the Rent Act. The suit was dismissed by the trial court. The

appellate court set aside the trial court's decree. In the writ petition filed by the tenant, it was urged that in the circumstances of the case, partial decree of eviction in respect of part of the premises be passed. This court observed that neither there is any pleading nor any evidence led by the tenant that part of the premises shall meet the landlady's need and looking to the need pleaded and proved by the landlady, it cannot be said that no hardship would be caused to the landlady if a decree is granted for part of the premises. In the instant case also, the defendants have not discharged the burden of proving availability of grounds under section 13(2) of the Rent Act. In the absence of any pleadings or evidence led by the tenant, the trial court could not have passed a partial decree.

32. In the final analysis it appears to me that the evidence on record clearly indicates that plaintiff 1 was residing in rented premises. There are only two rooms in possession of plaintiff's family which consists of six members. Plaintiff 2 is residing with his married son with children in the house of his brother-in-law. The said room admeasures 8′ x 8′. No evidence is adduced to show

that the plaintiffs have another house in Bombay and, in fact, this fact was conceded before the lower appellate court by the defendants' counsel. Plaintiff 2 has stated that his eye sight is weak and it is difficult for him to stay at Bombay. Besides, he cannot be compelled to reside in his brother-in-law's house. The suit house belongs to the plaintiffs and if after retirement, the plaintiffs want to stay there, their desire cannot be called unreasonable. The lower appellate court has rightly observed that there is no evidence to show that the defendants have taken any action against the tenants who are in possession of the house owned by them situated at Yeola. There is also no evidence to establish that the defendants made any efforts to get any alternative accommodation after the notice was served on them. In the circumstances, the lower appellate court is right in coming to the conclusion that greater hardship will be caused to the plaintiffs if the decree of eviction is refused.

33. Even assuming that this is a case of equal hardship to the landlord and the tenant, in such a case, the scales of justice should tilt in favour of the landlord. In **Gajanan Krishnaji Wakankar's**

case (supra), while considering the same question, this court has observed that when hardship is equal to the landlord and the tenant, decree of eviction is the right course.

34. In my opinion, therefore, no case is made out for interfering with the decree passed by the lower appellate court. The petition is, therefore, dismissed. Rule is discharged.

35. At this stage, the learned counsel for the petitioner states that sometime may be given to the defendants to vacate the suit premises. Mr.Sathe objects. In the circumstances of the case, the defendants are given six month's time to vacate the suit premises on a condition that all adult members of the defendant's family file an undertaking in this court that after the period of six months they shall handover vacant, unencumbered and peaceful possession of the suit premises to the plaintiffs. Needless to say that during this period the defendants shall pay rent to the plaintiffs. Undertaking to be filed within four weeks.

(SMT. RANJANA DESAI,J.)